



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Northport Handling, Inc.

File: B-274615

Date: December 18, 1996

Kenneth M. Bruntel, Esq., and Paul Shnitzer, Esq., Crowell & Moring, for the protester.

R. E. Overton, Jr. for R.O. White & Co., Inc., an intervenor.

Col. Nicholas P. Retson and Maj. Richard J. Anderson, Department of the Army, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester was not prejudiced by any errors that may have occurred during the evaluation of its performance under prior contracts where the record shows that even if the agency had assigned the highest possible numerical rating to protester's performance as the incumbent, that rating would have no impact on the protester's proposal's already low risk past performance rating or on the selection decision.

DECISION

Northport Handling, Inc., the incumbent, protests the award of a contract to R.O. White & Company, Inc. under request for proposals (RFP) No. DAHC24-95-R-0004, issued by the Department of the Army, Military Traffic Management Command (MTMC), Cape Canaveral Detachment, Florida, for stevedoring and related services. Northport contends that the agency's evaluation of its past performance and the source selection decision are unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued February 12, 1996, as a total small business set-aside, contemplated the award of a fixed-price, indefinite quantity contract for a 2-year base period of performance, with up to three option periods. The contract is for handling Department of Defense cargo, including hazardous materials such as explosives, bulk and general cargo, refrigerated cargo, and various types of military and

privately-owned vehicles of different size and weight. Section M of the RFP stated that price and past performance were the only areas the agency would consider in evaluating proposals; price was "slightly more important" than past performance.

The RFP stated that for each offeror the agency would conduct a risk assessment based on the offeror's past performance. In so doing, the agency would send questionnaires to references offerors were to provide with their proposals. In evaluating past performance, the agency was to focus on those areas of performance "most relevant to the solicitation requirements, such as quality of service, customer satisfaction, timeliness of performance, and cost control." Award was to be made to the offeror whose proposal was deemed most advantageous to the government.

Northport and White submitted the only two proposals received by the agency by the time set on March 26 for receipt of initial proposals. The contracting officer forwarded a past performance questionnaire to each of the references Northport and White listed in their proposals. Respondents were to rate the contractor's performance on each of 15 items on a scale ranging from 0 (unacceptable) to 4 (superior). The contracting officer did not receive a completed questionnaire evaluating Northport's performance as the incumbent on the stevedoring contract at the MTMC Cape Canaveral Detachment.

Based on the completed questionnaires that were returned to the agency, the contract specialist calculated an average numerical rating for each questionnaire item and an overall average past performance rating for each offeror. Under that approach, White earned an overall past performance rating of 3 points (out of a maximum possible score of 4 points), while Northport earned an overall rating of 3.4 points. Based on those results, the contract specialist determined with respect to both Northport and White that "little or essentially no doubt exists that [both offerors] would successfully perform the required effort and/or meet contract requirements" and assigned both proposals a past performance risk rating of low.

White's total evaluated price was \$1,785,621; Northport's total evaluated price was \$1,838,216. The contracting officer proposed award to White based on that firm's lower price; MTMC's Board of Contract Awards concurred in that recommendation; and on September 4, following a pre-award survey, the agency awarded the contract to White. This protest followed.

PROTESTER'S CONTENTIONS

Northport argues that the agency's evaluation of its past performance was flawed because the agency ignored its performance as the incumbent. Specifically, Northport maintains that in concluding that the awardee and the protester had essentially equivalent experience which resulted in both offerors receiving identical

low risk ratings, the agency unreasonably failed to take into account fundamental differences in the offerors' actual experience. The protester states that the RFP's requirements are virtually identical to the requirements of its current stevedoring contract at MTMC; that it referenced that contract in its proposal; and that it submitted information to the agency showing that it had been consistently rated as outstanding on that contract. Northport asserts that the agency improperly ignored that information.

Northport further argues that, by contrast, White has no experience handling military cargo (especially hazardous materials such as explosives), as contemplated by the RFP, and that the nature of the commercial cargo White has handled differs materially from the military cargo listed in the RFP. Northport concludes that by failing to properly consider the qualitative differences between Northport's and White's experience, the agency improperly changed the competition from a "best value" procurement to one where award was based on the technically acceptable, low-priced proposal.

ANALYSIS

Competitive prejudice is an essential element of a viable protest. Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Where no prejudice is shown, or is otherwise evident, our Office will not disturb an award, even if some technical deficiency in the award process arguably may have occurred. Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130, recon. denied, B-238706.4, Dec. 3, 1990, 90-2 CPD ¶ 444.

For the agency's actions to be prejudicial here, there must be some showing that had the agency in the evaluation of proposals considered Northport's specific performance as the incumbent, Northport's proposal would have received a better overall past performance risk assessment. As explained in greater detail below, there is no such indication in the record.

Assuming that Northport were to have received the highest numerical rating possible from the MTMC respondent (*i.e.*, four points on all 15 questionnaire items), Northport's average numerical rating would have increased only slightly from 3.4 to 3.5 points. That numerical rating would not have affected the already low risk rating assigned Northport's proposal. Since Northport's proposal could not have achieved a better risk rating, the agency's failure to include a completed questionnaire on Northport's performance as the incumbent was not prejudicial.

With regard to the practical effect on the evaluation, Northport in essence argues that, despite the equivalent "low risk" ratings assigned to the two proposals, consideration of the "qualitative" differences between Northport's and White's past

performance would have revealed that the risk associated with Northport's proposal was lower relative to White's. The record does not support this assertion.

The business clearance memorandum for this procurement shows that the contract specialist, the contracting officer, and at least two other agency officials at higher levels involved in the selection process were aware that "[Northport] is the incumbent . . . with a satisfactory record of performance," and that "[White] is new to the MTMC environment. . . ." Thus, contrary to the protester's suggestions, the record shows that procurement personnel, including the contracting specialist who was primarily responsible for assigning the risk ratings, were all aware of White's status as a relatively new firm to MTMC stevedoring services, and that Northport's performance as the incumbent had consistently been rated as "satisfactory" overall. Nevertheless, they regarded both as presenting the same degree of risk.

Accordingly, even if the agency had included a completed questionnaire on Northport's performance in the evaluation, or had translated its interim performance evaluations as the incumbent that Northport submitted with its proposal to a numerical past performance rating, there is no basis in the record to conclude that Northport's proposal's risk assessment would have been viewed as meaningfully better than White's. In short, it does not appear that Northport was prejudiced by the agency's failure to consider its performance as the incumbent to any greater extent than it did.

The protest is denied.

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